

The Treasury Market Practice Group

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The Federal Reserve Bank of New York

Antitrust Guidelines for the Members of the Treasury Market Practice Group and Associated Working Groups

Introduction

The U.S. Congress and the states have enacted antitrust laws to promote competition by ensuring that business is conducted in an open and competitive atmosphere, and that no unreasonable restraints are placed on competition. While antitrust law recognizes that groups like the Treasury Market Practice Group (the “TMPG”)¹ can make pro-competitive contributions to the American economy through best practice recommendations and other activities, such associations, because they bring together competitors to discuss conditions in their market, can be subject to antitrust scrutiny. While the TMPG does many positive things for the market, care must be taken when members communicate – whether at formal or informal meetings, conference calls, or electronically -- to ensure that no conduct becomes or appears to be anticompetitive.

Enforcement of the antitrust laws can come from not only the U.S. Department of Justice and state authorities, but also private individuals or entities who feel aggrieved by a particular course of conduct. Given the high profile of the TMPG within the financial community, members must expect careful scrutiny of the TMPG’s actions.

All members should review these Guidelines carefully and share them with any staff involved in TMPG projects and working groups. The TMPG is committed to strict compliance with law. If you have any questions about these Guidelines, please contact Janine Tramontana at 212-720-5438 or janine.tramontana@ny.frb.org.

Conduct to Avoid

Some conduct can be seen as violating the antitrust laws notwithstanding that it may have some beneficial effects on the market. This conduct could fall within the activities that antitrust law deems “per se” illegal. To avoid problems and embarrassment, members should never engage in any of the following conduct or activities.

- **Price Fixing Agreements:** Members should never agree to fix prices, fees, commissions, or any other element of the price or terms of a transaction. They should also never make agreements that could have the effect of fixing prices,

¹ In this document, guidance directed at TMPG members is intended to apply with equal force to members of any adjunct working groups formed by or under the TPMG.]

fees, or commissions. Discussions concerning these issues should always be avoided.

- **Sharing Pricing Information:** Members should never share or compare information concerning their firms' prices or fees, or the process of setting prices or fees, including costs that impact pricing or bidding, as this may be seen as an implicit attempt to fix prices, fees, or commissions.

- **Boycotts:** "Boycotts" refers to agreements among competitors to refuse to deal with someone, or to deal with a particular firm differently than others. Members should never agree either to treat a particular individual, firm, or group of customers in a prescribed manner, or to boycott any individual, firm, or group of customers. Members may not discuss setting prices for any particular customer or customers, nor should they agree to deal or not to deal with particular customers in a specific product.

- **Allocation of Customers or Territories:** Members should never agree to allocate customers or products among themselves. Discussions concerning plans to expand into or withdraw from certain geographic or product markets should be avoided.

Conduct that May or May Not Be Permissible

The following activities may or may not be permissible, depending on the circumstances. Antitrust law applies a "rule of reason" analysis to activities that are not "per se" illegal, weighing the anti-competitive effects against the pro-competitive justification of an activity to reach a legal determination of lawfulness. While antitrust law recognizes the benefits of these activities, care should be taken to ensure that otherwise permissible activities do not mask or promote actions that are or could be interpreted as anticompetitive.

- **Standard setting:** Standard setting should be avoided if the particular standards would make it more difficult for specific entities to compete in the market, or where significant barriers to entry would be raised. Adherence to standards must be voluntary, and the standards must be based on legitimate business reasons, such as improving market efficiency or integrity.

- **Information sharing:** You may discuss common problems and challenges of a general, administrative, or logistical nature as long as a purpose is not to encourage uniform action or eliminate competition. Information about a member's business may be shared in order to foster general understanding, and to contribute to the drafting of best practice recommendations. However, detailed information-sharing among members concerning confidential, proprietary, or competitively sensitive information, including but not limited to prices, business plans, marketing plans, new product development, internal costs, or non-public profit estimates, can raise antitrust concerns. Such proprietary information may

be shared, aggregated, and disseminated for legitimate business reasons through an FRBNY staff member.

• **Best Practice Recommendations:** This is one of the most important activities of the TMPG and can be done legally so long as a few principles are kept in mind. Best practice recommendations may not have the purpose or effect of eliminating competition in the pricing of products or services. Standards should seek to discourage practices that have a detrimental effect on customers and/or the reputation and integrity of the industry.

Legislative Activities

The TMPG may from time to time present its views regarding governmental and regulatory matters. Antitrust law specifically recognizes the right of competing members of a market to present a unified position to the government on issues impacting their market. However, members are advised to confine these communications and agreements to good faith, reasonable attempts to influence government actions.

Procedures to ensure compliance

Notwithstanding the restrictions noted above, there are many activities open to the TMPG. Best practices, market studies and press releases are all ways in which the TMPG may meet its written mandate to “support the integrity and efficiency of the Treasury, agency debt and agency mortgage-backed securities markets.” All these activities are acceptable because they are designed to improve the functioning, reputation, and integrity of the market.

The TMPG has created a number of procedures to help ensure that the letter and the spirit of the antitrust laws are followed. These procedures attempt to create an environment of antitrust compliance by promoting transparency, consistency, and fairness in the TMPG’s policies.

Specifically, all meetings will have an agenda, and all meetings will be attended by at least one attorney. Minutes, including a list of all attendees, will be recorded and reviewed by the attending attorney.

Even discussions outside formal meetings or conference calls between competitors – including conversations that are assumed to be “off the record”-- could result in antitrust scrutiny. Members must always police themselves, and are encouraged to report suspected violations of this policy to an attorney.